IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.972 OF 1991.

Arvind Gautamchand Doshi. .... Appellant.

Versus.

1. Master Kundan Madhukar Salvi,
   minor through his next friend
   and guardian his father Shri
   Madhukar Sambhaji Salvi (now a
   major).
2. The New India Assurance Co. Ltd.
   Pune. .... Respondents.

Shri Kulkarni for Shri A.A.Kumbhakoni for the Appellant.

Ms.Suhasini Mutalik for Respondent No.1.

Ms.Urmila Sanil for the Respondent No.2.

CORAM : ABHAY S. OKA, J.

Date on which hearing concluded : 7th June, 2006.

Date on which judgment pronounced. : 23rd June, 2006.

JUDGMENT.

1. Heard the learned Advocates appearing for the parties. The Appellant has taken exception to the Judgment and Award dated 17th September 1991 passed by the learned Member of the Motor Accident Claims Tribunal, Pune in Claim Petition under section 110A of

the Motor Vehicles Act, 1939. Respondent No.1 herein is the original Claimant in the claim petition. The Appellant is the owner of the Ambassador car which was involved in the accident. Respondent No.2 is the Insurance Company. The allegation of the Respondent No.1 was that the Ambassador Car was insured with the Respondent No.2 on the date of the accident.

2. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to refer to the facts of the case in brief. At the time of the accident the Respondent was 11 years of age. At the relevant time he was studying in 6th standard. The accident took place on 11th October 1983 at about 1.30 p.m. when he was going to school. He was accompanied by his elder sister. They were proceeding to school by Baramati Bhigvan Road. At that time the Appellant who was driving the Ambassador car gave a dash to the Respondent No.1. The Respondent No.1 suffered injuries and was admitted to Government Hospital at Baramati. Later on he took treatment Miraj, District Sangli. The learned Member of the Tribunal granted compensation of Rs.32,000/- with interest at the rate of 12% per annum from the date of the application till realisation.

3. The learned Counsel appearing for the Appellant submitted that the burden to prove negligence was on the 1st Respondent and he has failed to discharge the burden. It is submitted that there was no evidence to show that the Appellant was driving his car in a rash and negligent manner. The learned Counsel further submitted that the compensation granted is highly excessive. He pointed out that the Respondent No.1 did not produce any proof of disability or a disability certificate on record and therefore, on the count of disablement, the compensation could not have been awarded. He submitted that in any case the compensation of Rs.20,000/- on account of disablement could not have been granted.

4. The learned Counsel appearing for the 1st Respondent No.1 supported the impugned Judgment and Award and submitted that no interference is called for. The learned Counsel for the Respondent No.2 submitted that Respondent No.2 is not held liable to pay compensation and no interference is called for in the impugned Judgment and Award to that extent.

5. I have considered the rival submissions. The first question will be regarding the issue of negligence. The 1st Respondent entered the witness box

and stated that while crossing the road he had looked on both sides of the road to ascertain whether any vehicle was approaching. He stated that when he had crossed more than half of the road, the Ambassador car driven by the Appellant gave him a dash as a result of which he sustained fracture to his left leg and sustained injury to his right hand. He stated that he used to cross the road in 25 seconds and though he saw the car of the Appellant, he continued to cross the road. The Respondent No.1's sister who was accompanying him at the time of the accident was also examined. She stated that at the spot of the accident the road was very straight. She stated that the Appellant came in the Ambassador car in a very high speed and he did not blow horn. In the cross examination she stated that she had not seen Ambassador car while crossing the road till the accident.

6. The Appellant also stepped into the witness box. He stated that while sitting in the car he was talking to his friend. He had parked the car on the left side of the road and thereafter he started the vehicle. He stated that a tempo came from opposite direction and after the tempo passed the 1st Respondent suddenly crossed the road. He stated that he had blown the horn and stopped the vehicle. In the cross-examination the

Appellant stated that he saw the injured prior to the accident from a distance of about 30 to 40 feet. The learned trial Judge has recorded in the notes of evidence that after making the aforesaid statement, the Appellant volunteered to state that at that time he had stopped the vehicle and was talking. It is pertinent to note that he admitted that he saw the 1st Respondent from a distance of about 30 to 40 feet. It is not the case of the Appellant that he made an attempt to apply the brakes to avoid accident. It appears that the Appellant was talking to a person who was sitting in the car at that time. As a driver of the vehicle it was the duty of the Appellant to keep a vigil by looking around to find out whether any person was on the road. In the present case, he stated that from some distance he could see the 1st Respondent. it is admitted position that at the spot of accident road is very straight. If this is the evidence on record, no fault can be found with the finding recorded by the learned Member of the Tribunal that the accident occurred due to the negligence on the part of the Appellant.

7. This takes me to the consideration of the other issue regarding the quantum of compensation. The 1st Respondent examined Dr.Arun Phanseobkar. He produced the case papers of the First Respondent which show that

on 1st November 1983 the First Respondent was admitted to the Wanless Mission Hospital, Miraj and was discharged on 5th November 1983. Thereafter the First Respondent was again admitted to the hospital on 5th January 1984 and was discharged on 7th January 1984. The First Respondent was hospitalised on the third occasion on 3rd February 1984 and was discharged within two days. He stated that the 1st Respondent suffered fracture of shaft femur left side. He was given plaster hip spica under general anestesia on 3rd November 1983 and the said plaster was removed on 5th January 1984. He stated that bills in the sum of Rs.380/-, Rs.116/-, Rs.107/- were recovered from the guardian of the First Respondent. The First Respondent also examined Dr.Arun Kolatkar. He had examined the First Respondent on 12th February 1990 i.e. nearly 7 years from the date of the accident. After clinical examination of the First Respondent, he issued a medical certificate at Exh.66. The First Respondent also examined Dr.Sitaram Karande who was at the relevant time Medical Officer in Silver Jubilee Hospital. He stated that the First Respondent was having a simple fracture of femur bone.

8. The learned Member of the Tribunal has not recorded any specific finding that the First Respondent suffered any permanent disability as a result of the

injuries sustained in the accident. However, the learned Member has proceeded to grant compensation of Rs.20,000/- on account of disablement. In my view in the absence of any evidence regarding permanent disability suffered by the 1st Respondent, compensation could not have been awarded on the said count.

9. On the basis of the oral and documentary evidence on record, the learned Judge has held that a sum of Rs.7000/- deserved to be awarded to the First Respondent on account of medical expenses. The learned Member has observed that the bills and receipts totally amounting to Rs.1501.60 were produced by the 1st Respondent. In addition to that he had incurred expenditure of Rs.2100/- on transport and Rs.5000/- on account of special diet. While calculating the compensation in an accident claim, some guess work is necessarily required to be made. The First Respondent was hospitalised on three occasions. In such a case it always difficult for the Claimant to place on record all the bills and/or vouchers to arrive at the exact figure of expenses incurred on account of treatment, medical expenses, special diet etc. Considering the duration of hospitalisation and nature of injury and treatment which was required to be given to the First Respondent, a sum of Rs.10,000/- ought to have been granted on account of

expenses including the hire charges of taxi, special diet, purchase of medicine etc.

10. As held earlier, there is no evidence of any permanent disability suffered by the Respondent No.1. In fact in the impugned Judgment in clause (iii) of paragraph 16, the learned Member of the Tribunal has held that there is no disablement connected with leg. Therefore, on account of disability the learned Member of the Tribunal should not have awarded compensation of Rs.20,000/-. Now the question remains as to what amount should be awarded on account of pain and suffering. At the time of accident the age of the Respondent No.1 was 11 years. He suffered fracture of shaft femur on the left side. He had to undergo hospitalisation. He was required to undergo physiotherapy treatment. Considering all these aspects a sum of Rs.10,000/- deserve to be granted on account of pain and suffering. Hence compensation amount of Rs.32,000/- awarded by the learned Member under the impugned Judgment and Award will have to be reduced to Rs.20,000/-.

10. Hence the following order is passed:

i) The Appeal is partly allowed with no order as to costs.

ii) The impugned judgment and award dated 17th September 1990 is modified by directing that the Respondent No.1 will be entitled to compensation of Rs.20,000/- instead of Rs.32,000/-. Rest of the impugned Judgment and Award is maintained.

Judge.